

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

PACIFIC NORTHWEST SOLAR,
LLC,

Plaintiff,

vs.

NORTHWESTERN CORPORATION,
A DELAWARE CORPORATION
DBA NORTHWESTERN ENERGY,

Defendant.

No. CV-16-114-H-SEH

ORDER

A Joint Motion for Adjudication of Liability Issues by Court¹ was filed on June 4, 2021. A status conference on the record directed to the motion was held on June 9, 2021.

Upon the record made in open court,

ORDERED:

1. The Joint Motion for Adjudication of Liability Issues by Court² is

¹ Doc. 339.

² Doc. 339.

GRANTED to the extent stated in this Order.

2. On or before June 25, 2021, the parties shall file simultaneous briefs directed to any remaining liability issues warranting pretrial issue or resolution,³ including:

- a. Whether defenses of impossibility of performance and force majeure, or either, are available to excuse Northwestern Corporation (“NWE”) from performance of the Power Purchase Agreements (“PPAs”).
- b. Whether the four PPAs are enforceable contracts; and
- c. Whether NWE can be held as a matter of law to have breached the PPA’s by failure or refusal to perform if the Court determines defenses to liability as asserted by NWE in the Final Pretrial Order⁴ are unavailable.

3. Response briefs shall be filed on or before July 9, 2021.

4. Optional reply briefs may be filed on or before July 16, 2021.

5. The parties are invited to consider and address whether and to what extent issues in this case are implicated or affected by: (1) *Northern Indiana*


³ See Doc. 314 at 10-13.

⁴ Doc. 314.

*Public Service Company v. Carbon County Coal Company;*⁵ (2) *MTSUN v. Montana Department of Public Service Regulation;*⁶ and (3) *VoteSolar v. Montana Department of Public Service Regulation.*⁷

6. Upon completion of briefing as ordered, a hearing will be set by further order of Court, if necessary and appropriate, to address liability issues.

DATED this 10th day of June, 2021.



SAM E. HADDON
United States District Judge

⁵ 799 F.2d 265 (7th Cir. 1986).

⁶ 472 P.3d 1154 (Mont. 2020).

⁷ 473 P.3d 963 (Mont. 2020).